FILE COPY

Supreme Court of the United States

OCTOBER TERM, [illegible]

No. [illegible]

THE SOVEREIGN CAMP OF THE WOODMEN OF THE WORLD, A CORPORATION, PETITIONER,

VS.

WILLIAM T. BOLIN, EDWARD E. BOLIN, SAMUEL A. BOLIN ET AL., RESPONDENTS.

ON WRIT OF CERTIORARI TO THE KANSAS CITY COURT OF APPEALS OF THE STATE OF MISSOURI.

PETITIONER'S BRIEF.

RAINEY T. WELLS,
of Omaha, Nebraska,
JOHN T. HARDING,
DAVID A. MURPHY,
of Kansas City, Missouri,
Attorneys for Petitioner.

H. E. [illegible],
of Maryville, Missouri,
R. CARTER TUCKER,
JOHN MURPHY,
CHARLES B. [illegible],
of Kansas City, Missouri,
Of Counsel.

INDEX

TABLE OF CASES

STATUTES

Supreme Court of the United States

OCTOBER TERM, 1938.

No. 31.

THE SOVEREIGN CAMP OF THE WOODMEN OF THE WORLD, A CORPORATION, PETITIONER,

VS.

WILLIAM F. BOLIN, EDWARD E. BOLIN, SAMUEL A. BOLIN ET AL., RESPONDENTS.

ON WRIT OF CERTIORARI TO THE KANSAS CITY COURT OF APPEALS OF THE STATE OF MISSOURI.

I.

REFERENCES TO TRANSCRIPT OF RECORD.

In order to provide a sufficient number of copies of the transcript of record, it was necessary, after issuance of the writ of certiorari, to order additional copies printed. The page numbers of the reprinted copies do not correspond to those of the original copies. All references herein are made to pages of the reprinted copies. A comparative index appears in the front of the reprinted copies.

II.

OPINION BELOW.

The opinion of the Kansas City Court of Appeals is not yet officially reported, but appears in Volume 112, South Western Reporter, Second Series, at page 582, and in the record at pages 143 to 160. The additional opinion filed upon overruling the last motion for rehearing appears in Volume 112, South Western Reporter, Second Series, at page 592, and in the record at pages 161 to 163.

III.

JURISDICTION.

(a) Section 237b of the Judicial Code as amended by Act of February 13, 1925 (Title 28 U. S. C. A., Section 344b), is believed to sustain the jurisdiction of this court.

(b) The judgment sought to be reversed was rendered by the Circuit Court of Nodaway County, Missouri, on May 1, 1934 (Rec. 97, 98). Petitioner's motion for a new trial was overruled on May 28, 1934 (Rec. 100). Petitioner duly appealed to the Supreme Court of Missouri, where the cause was transferred, without decision on the merits, to the Kansas City Court of Appeals (339 Mo. 618, Rec. 113-117). The judgment of the Kansas City Court of Appeals and its first opinion affirming the judgment below were rendered June 14, 1937 (Rec. 118). Motion for rehearing was filed on June 24, 1937 (Rec. 136), and was sustained on July 7, 1937 (Rec. 139). The second opinion of the Kansas City Court of Appeals filed after rehearing, likewise affirming the judgment below, was rendered

November 15, 1937 (Rec. 139, 140, 143). A subsequent motion for rehearing was filed November 24, 1937 (Rec. 140), and was overruled January 10, 1938 (Rec. 143) and an additional opinion filed (Rec. 161). Petition for writ of certiorari was filed in the Supreme Court of Missouri, the court of last resort in the State of Missouri, on January 31, 1938 (Rec. 165), and was denied February 25, 1938 (Rec. 172). On March 15, 1938, the Kansas City Court of Appeals entered an order by which its mandate was stayed pending proceedings for writ of certiorari in this court (Rec. 164, 165). On May 7, 1938, petitioner filed in this court its petition for writ of certiorari, which was granted on May 31, 1938.

(c) Action was instituted in the Circuit Court of Nodaway County, Missouri, to recover under a beneficiary certificate issued by petitioner, a Nebraska fraternal beneficiary association, to Pleasant Bolin, of Nodaway County, Missouri (Rec. 4-7). The certificate, containing, among other language, the clause "Payments to cease after 20 years" (Rec. 22), was issued pursuant to a bylaw enacted by petitioner which provided, in substance, that after the member had paid dues and assessments for twenty years, the certificate would become fully paid (Rec. 47, Section 82). Dues and assessments necessary to keep the certificate in force had been paid for more than twenty years (Rec. 29, 62). Petitioner contending that, under its charter, the bylaw and the limited payment feature of the beneficiary certificate were *ultra vires* and invalid, and that by his default after expiration of the twenty-year period, the deceased had ren-

dered his certificate void, invoked a judgment of the Supreme Court of Nebraska rendered in the case of *Trapp* v. *Sovereign Camp of the Woodmen of the World*, 102 Neb. 562, in which it was adjudicated that under petitioner's charter the bylaw providing for limited payment certificates and the limited payment feature of certificates issued thereunder were *ultra vires* of petitioner and invalid (Rec. 71-94), and contended that said judgment and petitioner's charter were entitled to be accorded full faith and credit under Article IV, Section 1, of the Constitution of the United States. Petitioner had pleaded in its answer (Rec. 7-16) and had introduced in evidence (Rec. 64, 67, 71-94) its Articles of Incorporation, the applicable statutes of Nebraska in force at the time of the issuance of the beneficiary certificate and the record and judgment of the Supreme Court of Nebraska in *Trapp* v. *Sovereign Camp of the Woodmen of the World*, *supra*.

It was held in the trial court, and later on appeal, that because the certificate was a Missouri contract, the rights of respondents were to be determined under the laws of Missouri, and not under the laws of Nebraska, and that neither petitioner's charter, nor the aforesaid Nebraska judgment, were entitled to be accorded full faith and credit under Article IV, Section 1 of the Constitution (Rec. 143-160, 161-163).

(d) It is believed that the cases of *Roche* v. *McDonald*, 275 U. S. 449; *Aetna Life Insurance Co.* v. *Dunken*, 266 U. S. 389; *Modern Woodmen of America* v. *Mixer*, 267 U. S. 544 and *Supreme Council of the Royal Arcanum* v.

Green, 237 U. S. 531, sustain the jurisdiction of this court. The petition for writ of certiorari requested that the writ be directed to the Kansas City Court of Appeals on the authority of *Western Union Telegraph Co.* v. *Priester*, 276 U. S. 252.

In view of the refusal of the Supreme Court of Missouri to assume jurisdiction (339 Mo. 618, Rec. 113-117) and its denial of the petition for writ of certiorari filed by petitioner (Rec. 172), the Kansas City Court of Appeals was the highest court in the State of Missouri in which a decision could be had on the merits of the instant case. Constitution of Missouri, Article VI as amended by Amendment of 1884, Sections 1914, 1915, Mo., R. S., 1929, *Mergenthaler Linotype Co.* v. *Davis et al.*, 251 U. S. 256.

IV.

STATEMENT.

In January, 1891, petitioner was incorporated under the general laws of Nebraska as a fraternal beneficiary association, without capital stock, for social, fraternal and benevolent purposes (Rec. 64-67). Article 3 of its Articles of Incorporation provided as follows (Rec. 65):

> "The object of this Order and these articles incorporating is to organize and establish a social, fraternal, beneficiary and benevolent order by combining and associating together white male persons of sound bodily health, exemplary habits and good moral character between the ages of sixteen and sixty years, with power in the Sovereign Executive Council to hereafter change the ages of admission to eighteen years and not over fifty, or fifty-five

years, should it be deemed to the interest of the Order to do so.

"To create a fund from which, upon reasonable and satisfactory proofs of the death of a member in good standing holding a beneficiary certificate, there shall be paid the proceeds of one assessment upon the surviving members, from whom the same can be legally collected a sum not to exceed Three Thousand Dollars ($3,000.00) to the designated beneficiary of said deceased member according to the terms of the beneficiary certificate, or if none survive, to such beneficiary as the conditions of the laws of said Order shall provide."

In furtherance of the objects expressed in its articles of incorporation, petitioner adopted a constitution and by-laws providing, among other things, for the creation and establishment, from dues and assessments paid by its members, of a "Beneficiary Fund," from which death benefits would be paid to the beneficiaries designated in beneficiary certificates issued by petitioner to its members, and for the establishment of camps or lodges in various localities to receive applications for membership and to carry on the social, benevolent and fraternal objects of the order (Rec. 41-49).

In the year 1895, a bylaw was adopted by petitioner (hereinafter referred to as Section 82) which provided as follows (Rec. 47):

"Sec. 82. Life Membership Certificates shall be issued by the Sovereign Camp to all members of the Woodmen of the World, under the following conditions:

"When the certificate of a member who has entered the Order between the ages of 16 and 33 has

been in force and binding for 30 years, or of members entering between 34 and 42 years of age when the certificate has attained the age of 25 years, and all members entering the Order over 43 years of age when the certificate has attained the age of 20 years; and that after the said Life Membership Certificate has been issued the Life Member shall not be liable for Camp dues, assessments or General Fund dues. That the proper officers of the Sovereign Camp shall issue quarterly, assessment calls upon all members of the Woodmen of the World, regardless of jurisdiction or nation, for a sufficient amount to pay all death claims accruing during the previous three months, for said Life Members who have died during said time, under this provision and that any Life Member visiting a Camp shall be greeted with the honors of the Order and shall be seated at the right of the Consul Commander, and shall also be entitled to wear a Life Membership badge, to be designed and prescribed by the Sovereign Camp."

On June 3, 1896 (Rec. 22, 23), while Section 82 was thought to be lawfully in effect, petitioner issued to one Pleasant Bolin, of Nodaway County, Missouri, who was then 47 years of age (Rec. *id.*) and who had made application therefor to the lodge or camp established at Arkoe, Missouri (Rec. 35-41), its beneficiary certificate No. 8955, providing for the payment of camp or lodge dues and monthly assessments of ninety cents by the member, and for the payment by petitioner from its "Beneficiary Fund" of death benefits in the amount of $1,000.00 and $100.00 monument fund to the beneficiaries named therein, which certificate, pursuant to said Section 82, contained in the margin thereof the words "Payments to cease after 20 years" (hereinafter called "payments to cease clause"), and contained in the body thereof language

providing, in substance, that the certificate would become void if the member failed to pay the dues and assessments required to be paid under said beneficiary certificate, or to comply with the constitution and bylaws of petitioner then in force or thereafter to be adopted, to which the issuance and acceptance of the certificate was expressly made subject (Rec. 22-24).

The beneficiary certificate in question was substantially identical with many other such certificates issued by petitioner to its members pursuant to said Section 82 (Rec. 35).

In the year 1899 said Section 82 (then Section 68, Rec. 50) was legally repealed (Rec. 61).

Thereafter, Prince L. Trapp, being the holder of a beneficiary certificate issued by petitioner pursuant to Section 82 and containing said "payments to cease" clause, instituted against petitioner in the District Court of Douglas County, Nebraska, a suit "* * * for and on behalf of himself and all others similarly situated * * *" to compel petitioner to issue to him a paid-up certificate under said Section 82 (Rec. 71). The petition alleged, in substance, that Trapp became a member of the order in reliance upon the limited payment feature of the beneficiary certificate, and that he paid all dues and assessments for more than twenty years (Rec. 72-75). Petitioner filed an answer, alleging in substance, that under its charter said Section 82 and the "payments to cease" clause contained in the beneficiary certificate were *ultra vires* and invalid (Rec. 78-88), to which a reply was filed alleging, among other things, that petitioner was "* * * forever estopped from denying the validity of its con-

tract * * *" (Rec. 89). Judgment was rendered in favor of this petitioner in the district court (Rec. 90) from which an appeal was taken to the Supreme Court of Nebraska, where the judgment in favor of this petitioner was affirmed. *Trapp* v. *Sovereign Camp of the Woodmen of the World,* 102 Neb. 562 (Rec. 92). The court's decision was based upon its previous decision in *Haner* v. *Grand Lodge, A. O. U. W., of Nebraska,* 102 Neb. 563 (Rec. 93, 94), where it was held that the enactment of a bylaw similar in principle with said Section 82 by a fraternal beneficiary association created under the laws of the State of Nebraska was *ultra vires* and void, and that in a suit to compel the association to issue a paid-up certificate, the association was not estopped to assert the invalidity of the bylaw.

Pleasant Bolin, to whom the beneficiary certificate involved herein was issued, paid to petitioner the dues and assessments required to keep the certificate in force for a period of more than twenty years (Rec. 29, 32, 33, 62), after which he ceased to pay any dues or assessments whatever, and as a result petitioner treated his certificate as having been rendered void by his default and his membership as having been automatically suspended (Rec. 32, 33, 34, 62).

On July 18, 1933, Pleasant Bolin died (Rec. 20), and thereafter there was commenced in the Circuit Court of Nodaway County, Missouri, by the beneficiaries named in the aforesaid beneficiary certificate (respondents herein), against petitioner, a suit entitled "*William F. Bolin et al.* v. *Sovereign Camp of the Woodmen of the World*" to recover of petitioner said sum of $1,100.00 as benefits

under said certificate (Rec. 4-7). In said action, this petitioner, contending that the enactment of said Section 82 and the inclusion of the "payments to cease" clause in the benefit certificate were each *ultra vires* and invalid, and that the certificate on August 1st, 1916, had been rendered void by default in the payment of dues and assessments for July, 1916, duly pleaded in its answer the provisions of its articles of incorporation, the statutes of Nebraska in force at the time of the issuance of the beneficiary certificate, the judgment of the Supreme Court of Nebraska in *Trapp v. Sovereign Camp of the Woodmen of the World, supra,* and invoked the full faith and credit provision of the Constitution of the United States (Rec. 7-16). Respondents filed a reply to this petitioner's answer, alleging, among other things, that this petitioner was estopped to assert that the enactment of said bylaw and the inclusion of the "payments to cease" clause in the margin of the beneficiary certificate were *ultra vires* of petitioner and invalid (Rec. 16-18). Upon the trial of said case, judgment was rendered against petitioner in the amount of $1,100.00 (Rec. 97, 98). After an unsuccessful motion for a new trial (Rec. 18), petitioner duly appealed to the Supreme Court of Missouri (Rec. 19), where the cause was transferred to the Kansas City Court of Appeals (Rec. 113-117, *Bolin et al.* v. *Sovereign Camp W. O. W.*, 339 Mo. 618). The Kansas City Court of Appeals thereafter filed an opinion, affirming said judgment (Rec. 118-136) and upon rehearing held pursuant to a motion therefor filed by petitioner (Rec. 136), filed a subsequent opinion also affirming said judgment (Rec. 143-160). Thereafter, petitioner filed a subsequent mo-

tion for rehearing (Rec. 140) which was overruled by said Kansas City Court of Appeals (Rec. 143) and an additional opinion filed (Rec. 161-163). Thereafter, petitioner filed in the Supreme Court of Missouri a petition for a writ of certiorari (Rec. 165), which was denied (Rec. 172).

In its opinion, said Kansas City Court of Appeals, in affirming said judgment against petitioner, held, in substance, that the beneficiary certificate in question, having been applied for, issued and accepted in the State of Missouri, and the dues provided for thereunder having been paid in Missouri, the rights of the beneficiaries thereunder are to be determined by application of the laws of Missouri. In said opinion the court stated, in part (Rec. 158):

> "The certificate in question being a Missouri contract, it necessarily follows that such a contract is governed by Missouri law only. Therefore, the statutes or decisions of the State of Nebraska are not involved; and the 'full faith and credit' provision of the Federal Constitution likewise is not involved."

The court further stated (Rec. 155):

> "The contention of the defendant that we are concluded, not only as to the character of the *ultra vires* act in question but as to the estoppel, by the holding of the Supreme Court of the State of Nebraska in the Trapp case is not well made. The certificate being a Missouri contract, whether its act was *ultra vires* or not is to be determined by the laws of this state, regardless of any holding of the Supreme Court of Nebraska."

At the time of the issuance of the beneficiary certificate no license was required by the laws of Missouri of a foreign fraternal society for doing business in this state, nor was there any Missouri law by which the petitioner could procure a license. The Kansas City Court of Appeals held, in substance, that because of that fact it did business in Missouri under the general insurance laws and that since it was neither pleaded nor proven that the petitioner had complied with after-enacted laws exempting fraternal associations from the general insurance laws, the beneficiary certificate was an "old-line" contract of insurance; that neither it nor the trial court were bound under Article IV, Section 1 of the Constitution of the United States, to accord full faith and credit to petitioner's charter, nor to the aforesaid judgment of the Supreme Court of Nebraska, the highest judicial tribunal in that state, in *Trapp* v. *Sovereign Camp of the Woodmen of the World, supra,* the law of Missouri being controlling, and that under the law of Missouri the issuance of the limited payment certificate by petitioner was not *ultra vires* nor invalid, and that if it were, petitioner would be estopped to assert it (Rec. 143-160, 161-163).

On May 31, 1938, this court granted its writ of certiorari to review the judgment of the Kansas City Court of Appeals (Rec. 173).

V.

ASSIGNMENT OF ERROR.

The Kansas City Court of Appeals erred in refusing to accord full faith and credit under Article IV, Section 1, of the Constitution of the United States to petitioner's charter and to the decision and judgment of the Supreme Court of Nebraska, the highest judicial tribunal in that state, in the case of *Trapp* v. *Sovereign Camp of the Woodmen of the World,* 102 Neb. 562 (Rec. 71-94), announcing the legal significance of petitioner's charter as between petitioner and its members, and holding that the enactment of Section 82 of petitioner's bylaws, and the inclusion of the "payments to cease after 20 years" clause in its benefit certificate were each *ultra vires* of petitioner and void, and that in an action brought by a member to recover under the provisions of said bylaw and the "payments to cease after 20 years" clause, petitioner was not estopped from asserting the invalidity of said bylaw and said "payments to cease after 20 years" clause.

VI.

SUMMARY OF ARGUMENT.

(a) The relative rights and duties of petitioner and respondents under the beneficiary certificate in question must be determined by application of the laws of the State of Nebraska, notwithstanding the fact that the certificate was issued and accepted and the dues were paid in the State of Missouri.

Supreme Council of Royal Arcanum v. *Green*, 237 U. S. 531.

Reynolds v. *Supreme Council of the Royal Arcanum*, 192 Mass. 150.

Modern Woodmen of America v. *Mixer*, 267 U. S. 544.

Hartford Life Ins. Co. v. *Ibs*, 237 U. S. 662.

Hartford Life Ins. Co v. *Barber*, 245 U. S. 146.

Head & Amory v. *The Providence Insurance Co.*, 2 Cranch 127.

Bank of the United States v. *Dandridge*, 25 U. S. 64.

Canada Southern Railroad Co. v. *Gebhard*, 109 U. S. 527.

Broderick v. *Rosner*, 294 U. S. 629.

Dartmouth College v. *Woodward*, 4 Wheat. 518, 636.

Perrine v. *Chesapeake & Delaware Canal Co.*, 50 U. S. 172, 184.

Relfe v. *Rundle*, 103 U. S. 222, 226.

Hawkins v. *Glenn*, 131 U. S. 319, 331, 332.

Hancock Nat'l Bank v. *Farnum*, 176 U. S. 640

Waters-Pierce Oil Co. v. *Texas*, 177 U. S. 28, 44, 45.

Nashua Savings Bank v. *Anglo-American Co.*, 189 U. S. 221, 229, 230.

Bernheimer v. *Converse*, 206 U. S. 516, 533.
Converse v. *Hamilton*, 224 U. S. 243, 260.
Selig v. *Hamilton*, 234 U. S. 652, 658, 659.
Harrigan v. *Bergdoll*, 270 U. S. 560, 564.

(b) The judgment of the Supreme Court of Nebraska was a final, valid adjudication that under petitioner's charter, Section 82 and the limited payment provisions of the beneficiary certificates issued pursuant to said bylaw were *ultra vires* of petitioner and invalid, and that petitioner is not estopped to assert their invalidity in a suit based upon said bylaw to enforce the limited payment features of the beneficiary certificate.

Trapp v. *Sovereign Camp of the Woodmen of the World*, 102 Neb. 562.
Haner v. *Grand Lodge, A. O. U. W.*, 102 Neb. 563.

(c) The aforesaid judgment of the Supreme Court of Nebraska having been rendered in a suit brought for the benefit of a class to which Pleasant Bolin belonged, and being a final adjudication of a controversy as to which petitioner could stand in judgment for its members, is *res adjudicata* and binding upon respondents, and should have been accorded full faith and credit in the court below.

Smith v. *Swormstedt*, 16 How. 288.
Bernheimer v. *Converse*, 206 U. S. 516.
Converse v. *Hamilton*, 224 U. S. 243.
Selig v. *Hamilton*, 234 U. S. 652.
Broderick v. *Rosner*, 294 U. S. 629.
Parker v. *Luehrmann et al.*, 126 Neb. 1.
Supreme Council of the Royal Arcanum v. *Green*, 237 U. S. 531.

Hartford Life Ins. Co. v. *Ibs*, 237 U. S. 662.
Hartford Life Ins. Co. v. *Barber*, 245 U. S. 146.

(d) If the Nebraska judgment is not considered *res adjudicata* and binding upon respondents in a personal sense, it nevertheless announces the legal significance of petitioner's charter under the laws of Nebraska, and the charter, as thus interpreted, was entitled to have been accorded full faith and credit in the court below.

Chicago & Alton Railroad v. *Wiggins Ferry Co.*, 119 U. S. 615.
Supreme Council of the Royal Arcanum v. *Green*, 237 U. S. 531.
Hartford Life Ins. Co. v. *Barber*, 245 U. S. 146.

(e) The decision of the court below on the question of estoppel was, of itself, a denial of full faith and credit to petitioner's charter and the Nebraska judgment because (1) the decision was reached by application of the laws of Missouri instead of the laws of Nebraska; and (2) the issue of estoppel was finally adjudicated by the Nebraska judgment in favor of petitioner.

Trapp v. *Sovereign Camp of the Woodmen of the World*, 102 Neb. 562.
Haner v. *Grand Lodge, A. O. U. W.*, 102 Neb. 563.
Mills v. *Duryee*, 7 Cranch 481.
Hampton v. *McConnell*, 3 Wheat. 234.
Hancock Nat'l Bank v. *Farnum*, 176 U. S. 640.
Converse v. *Hamilton*, 224 U. S. 243.
Roche v. *McDonald*, 275 U. S. 449.
American Express Co. v. *Mullins*, 212 U. S. 311.
Fauntleroy v. *Lum*, 210 U. S. 230.
United States v. *California & Oregon Land Co.*, 192 U. S. 355.

(f) The opinion of the Supreme Court of Nebraska was the construction of a fraternal charter. It held that under said charter Section 82 and the "payments to cease" clause were *ultra vires* and void. It also held that the plea of estoppel was not available. It is, therefore, wholly immaterial whether under the Missouri law the certificate is labeled fraternal or old line. If the constitutional question is present, the plea of estoppel, under the Missouri law, must be absent. They are antagonistic and cannot abide together. The fact that no license was required of the association in Missouri at the time the certificate was written in no sense affects the constitutional mandate.

Canada Southern Railroad v. *Gebhard*, 109 U. S. 527, 537.

(g) Application of the Missouri insurance laws by the court below changed and impaired the substantive rights of petitioner established by the laws of Nebraska and its charter and the Nebraska judgment were denied the credit, validity and effect to which they were entitled under the full faith and credit provision of the constitution.

Bradford Electric Light Co. v. *Clapper*, 286 U. S. 145.
John Hancock Mut. Life Ins. Co. v. *Yates*, 299 U. S. 178.
Aetna Life Ins. Co. v. *Dunken*, 266 U. S. 389.
Modern Woodmen of America v. *Mixer*, 267 U. S. 544.
Hanover Fire Ins. Co. v. *Carr*, 272 U. S. 494.
Christmas v. *Russell*, 5 Wall. 290.
Fauntleroy v. *Lum*, 210 U. S. 230.
Kenny v. *Supreme Lodge*, 252 U. S. 411.
Roche v. *McDonald*, 275 U. S. 449.

VII.

ARGUMENT.

(a) The relative rights and duties of petitioner and respondents under the beneficiary certificate in question must be determined by application of the laws of Nebraska, notwithstanding the fact that the beneficiary certificate was issued and accepted and the dues were paid in Missouri.

Since it has been asserted that the court below erred in refusing to accord full faith and credit to the charter of petitioner, a Nebraska corporation, and to a judgment rendered by the Supreme Court of Nebraska in an action in which neither respondents nor Pleasant Bolin were summoned as parties, it is necessary, in order to determine the effect which should be given to the judgment and the charter, to determine whether the law of Nebraska or the law of Missouri is controlling upon the parties.

The necessity for making this determination was stated by Mr. Chief Justice White in the case of *Supreme Council of the Royal Arcanum* v. *Green*, 237 U. S. 531, 541, in the following language:

> "And as what was the due effect to be given to the judgment depended, as we shall hereafter more particularly point out, upon whether the Massachusetts law controlled the parties, since if it did, the judgment would be entitled to one effect, and if it did not, to another effect, it follows that the claim as to constitutional right concerning the judgment also involved deciding whether the Massachusetts law controlled."

In the court below, it was decided that since the beneficiary certificate was issued and accepted in Missouri and the dues were paid in that state, the law of Missouri was controlling in deciding the controversy (Rec. 143-160, 161-163).

In the course of the opinion it was said (Rec. 155):

> "The certificate being a Missouri contract, whether its act was *ultra vires* or not is to be determined by the laws of this state, regardless of any holding of the Supreme Court of Nebraska."

Further in the opinion the court said (Rec. 158):

> "The certificate in question being a Missouri contract, it necessarily follows that such a contract is governed by Missouri law only. Therefore, the statutes or decisions of the State of Nebraska are not involved; and the 'full faith and credit' provision of the Federal Constitution likewise is not involved."

The full faith and credit provision of the constitution was invoked in the instant case because the beneficiary certificate was issued in Missouri by a Nebraska fraternal association whose powers under its charter had been determined by the Supreme Court of Nebraska.

If petitioner had issued the certificate in Nebraska to a resident of that state, the laws of Nebraska would necessarily have controlled under ordinary principles of the conflict of laws and there would have been no need to have invoked the constitutional provision. If the powers of the association under the Missouri law had been the same as under the Nebraska law, there would have been no need to have raised the constitutional

question. The full faith and credit provision was adopted to meet such diversities as are present in this case. If estoppel under the Missouri law is sustained because of such diversity, then the constitutional provision is a nullity. If the laws of the various states were uniform, the constitutional provision would become obsolete.

In contrast with the decision of the court below, this court has uniformly held that the relative rights and duties between a fraternal association and its members must be determined by application of the laws of the state under which the association was created and to which it owes its existence, notwithstanding the fact that the controversy between the association and its members arises under a beneficiary certificate issued and accepted in a foreign state.

A case typical of those above referred to and one which we believe to be controlling of the instant case is that of *Supreme Council of the Royal Arcanum* v. *Green, supra.* In that case a fraternal association created under the laws of Massachusetts enacted a bylaw by which its membership dues were increased. Shortly after the increased rate went into effect, sixteen members of the association filed a bill in the Supreme Judicial Court of Massachusetts against the association in their own behalf and in behalf of all other certificate holders to vacate and set aside the bylaw on the ground that the increase was *ultra vires* of the association and violative of their contract rights. The Massachusetts court decided that the increase complained of was valid, impaired no contract right, and was entitled to be enforced. *Reynolds* v. *Supreme Council of the Royal Arcanum,* 192 Mass. 150.

Subsequently, Samuel Green, a certificate holder, commenced in the courts of the State of New York a suit against the association in which the validity of the increase was assailed. It was decided in the court of appeals of the State of New York, where the case was reviewed on appeal, *that since the certificate was a New York contract, the laws of the State of New York were controlling,* and that the courts of New York were not bound to apply the law of Massachusetts nor to accord full faith and credit to the charter of the association or the Massachusetts judgment.

On a writ of error issued to the New York court, this court held, among other things, that under the full faith and credit provisions of the constitution the New York court, in determining the effect to be given to the judgment rendered in Massachusetts and to the charter of the association, was bound to apply the law of Massachusetts. In the course of the opinion, it was said (l. c. 541, 542):

> "It is not disputable that the corporation was exclusively of a fraternal and beneficiary character and that all of the rights of complainant concerning the assessment to be paid to provide for the Widows' and Orphans' Benefit Fund had their source in the constitution and bylaws and therefore their validity could be alone ascertained by a consideration of the constitution and bylaws. This being true, it necessarily follows that resort to the constitution and bylaws was essential unless it can be said that the rights in controversy were to be fixed by disregarding the source from which they arose and by putting out of view the only considerations by which their scope could be ascertained. *Moreover, as the charter was a Massachusetts charter and the constitution and bylaws were a part thereof, adopted in Massachu-*

setts, having no other sanction than the laws of that state, it follows by the same token that those laws were integrally and necessarily the criterion to be resorted to for the purpose of ascertaining the significance of the constitution and bylaws" (italics ours).

Mr. Chief Justice White, discussing the practical effect of applying the law of any other state, said (l. c. 542, 543):

"Indeed, the accuracy of this conclusion is irresistably manifested by considering the intrinsic relation between each and all the members concerning their duty to pay assessments and the resulting indivisible unity between them in the fund from which their rights were to be enjoyed. The contradiction in terms is apparent which would rise from holding on the one hand that there was a collective and unified standard of duty and obligation on the part of the members themselves and the corporation, and saying on the other hand that the duty of the members was to be tested isolatedly and individually by resorting not to one source of authority applicable to all but by applying many divergent, variable and conflicting criteria * * *. And from this it is certain that when reduced to their last analysis the contentions relied upon in effect destroy the rights which they are advanced to support, since an assessment which was one thing in one state and another in another and a fund which was distributed by one rule in one state and by a different rule somewhere else, would in practical effect amount to no assessment and no substantial sum to be distributed. It was doubtless not only a recognition of the inherent unsoundness of the proposition here relied upon, but the manifest impossibility of its enforcement which has led courts of last resort of so many states in passing on questions involving the general authority of fraternal associations and their duties as to subjects of a general character concern-

ing all their members to recognize the charter of the corporation and the laws of the state under which it was granted as the test and measure to be applied."

The question was subsequently presented to this court in *Modern Woodmen of America* v. *Mixer*, 267 U. S. 544, where the beneficiary, under a beneficiary certificate issued by a fraternal association created under the laws of Illinois, sought recovery thereunder in the courts of Nebraska, on the ground that the member to whom the certificate was issued had disappeared and had not been heard from for more than ten years. The association had enacted a bylaw which provided, in substance, that long continued absence of a member, unheard of, did not give a right to recover on a benefit certificate until after the life expectancy of the member had expired. This bylaw had been held valid and binding upon the members by the Supreme Court of Illinois in a case to which neither the absent member nor the beneficiary were summoned as a party.

The certificate under which recovery was sought was issued in South Dakota prior to the adoption of the aforesaid bylaw.

It was held, among other things, that in determining the validity of the bylaw and the effect to be given to the judgment of the Supreme Court of Illinois, the Nebraska court was bound to apply the laws of Illinois. In the course of the opinion, Mr. Justice Holmes said (l. c. 551):

"The indivisible unity between the members of a corporation of this kind in respect of the fund

from which their rights are to be enforced and the consequence that their rights must be determined by a single law, is elaborated in *Supreme Council of the Royal Arcanum* v. *Green*, 237 U. S. 531, 542. The act of becoming a member is something more than a contract, it is entering into a complex and abiding relation, and as marriage looks to domicile, membership looks to and must be governed by the law of the state granting the incorporation. We need not consider what other states may refuse to do, but we deem it established that they cannot attach to membership rights against the company that are refused by the law of the domicile. *It does not matter that the member joined in another state*" (italics ours).

To the same effect are the cases of *Hartford Life Ins. Co.* v. *Ibs*, 237 U. S. 662, and *Hartford Life Ins. Co.* v. *Barber*, 245 U. S. 146, both involving the effect to be given to a judgment rendered in Connecticut concerning the validity of an increased assessment levied by a mutual insurance company created under the laws of Connecticut. In the former case it was said (l. c. 671):

> "It was for the court of the state where the company was chartered and where the fund was maintained to say what was the character of the members' interest—whether they were entitled to have it distributed in cash; or used in paying the next assessment; or retained as a fund for the prompt settlement of claims with the right and duty on the part of the company, as their trustee, to replenish the same by collections from succeeding assessments."

The court, discussing the practical effect of holding otherwise, said (l. c. 670, 671):

> "The fund was single, but having been made up of contributions from thousands of members their interest was common. It would have been destruc-

tive of their mutual rights in the plan of mutual insurance to use the mortuary fund in one way for claims of members residing in one state and to use it in another way as to claims of members residing in a different state. To make advances replenished by assessments against those living in Connecticut—and to make advances without the right to replenish against those living in Wisconsin—would have destroyed the very equality the assessment plan was intended to secure. Manifestly the question as to the ownership and proper administration of the fund could not be left at large for collateral decision in every suit on certificates held by those who had failed to pay the assessment."

Since the year 1804, this court, in cases not differing essentially in principle with the foregoing cases, has recognized and applied the rule that the laws of the state granting the incorporation are controlling in determining the powers of the corporation under its charter, and the relative rights and duties between the corporation and its members.

Thus, in the case of *Head & Amory* v. *The Providence Insurance Co.*, 2 Cranch 127, decided by this court in the year 1804, Mr. Chief Justice Marshall, considering the law applicable for determining the powers of a corporation, said (l. c. 167):

"Without ascribing to this body, which, in its corporate capacity, is the mere creature of the act to which it owes its existence, all the qualities and disabilities annexed by the common law to ancient institutions of this sort, it may correctly be said to be precisely what the incorporating act has made it, to derive all its powers from that act, and to be capable of exerting its faculties only in the manner which that act authorizes.

"To this source of its being, then, we must recur to ascertain its powers * * *."

Subsequently, in the case of *Bank of the United States* v. *Dandridge*, 25 U. S. 64, decided in the year 1827, Mr. Justice Story said (l. c. 68):

"But whatever may be the implied powers of aggregate corporations by the common law, and the modes by which those powers are to be carried into operation, corporations created by statute must depend, both for their powers, and the mode of exercising them, upon the true construction of the statute itself."

Later, in the case of *Canada Southern Railroad Co.* v. *Gebhard*, 109 U. S. 527, this court said (l. c. 537):

"A corporation 'must dwell in the place of its creation, and cannot migrate to another sovereignty' (*Bank of Augusta* v. *Earle*, 13 Pet. 588), though it may do business in all places where its charter allows and the local laws do not forbid. *Railroad* v. *Koontz*, 104 U. S. 12. *But, wherever it goes for business it carries its charter, as that is the law of its existence* (*Relfe* v. *Rundle*, 103 U. S. 226), *and the charter is the same abroad that it is at home. Whatever disabilities are placed upon the corporation at home it retains abroad, and whatever legislative control it is subjected to at home must be recognized and submitted to by those who deal with it elsewhere.* A corporation of one country may be excluded from business in another country (*Paul* v. *Virginia*, 8 Wall. 168), but, if admitted, it must, in the absence of legislation equivalent to making it a corporation of the latter country, be taken, both by the government and those who deal with it, as a creature of the law of its own country, and subject to all the legislative control and direction that may be properly exercised over it at the place of its creation" (italics ours).

And in the recent case of *Broderick* v. *Rosner*, 294 U. S. 629, this court, giving consideration to the law applicable in determining the liability of stockholders of a banking corporation found to be insolvent by a court of competent jurisdiction in the state under the laws of which the bank was created, said (l. c. 643):

> "The statutory liability sought to be enforced is contractual in character. The assessment is an incident of the incorporation. Thus the subject matter is peculiarly within the regulatory power of New York as the state of incorporation."

To the same effect are the cases of *Dartmouth College* v. *Woodward*, 4 Wheat. 518, 636; *Perrine* v. *Chesapeake & Delaware Canal Co.*, 50 U. S. 172, 184; *Relfe* v. *Rundle*, 103 U. S. 222, 226; *Hawkins* v. *Glenn*, 131 U. S. 319, 331, 332; *Hancock Nat'l Bank* v. *Farnum*, 176 U. S. 640; *Waters-Pierce Oil Co.* v. *Texas*, 177 U. S. 28, 44, 45; *Nashua Savings Bank* v. *Anglo-American Co.*, 189 U. S. 221, 229, 230; *Bernheimer* v. *Converse*, 206 U. S. 516, 533; *Converse* v. *Hamilton*, 224 U. S. 243, 260; *Selig* v. *Hamilton*, 234 U. S. 652, 658, 659; *Harrigan* v. *Bergdoll*, 270 U. S. 560, 564.

In the instant case, petitioner, in furtherance of the objects expressed in its articles of incorporation, had enacted a constitution and bylaws providing, among other things, for the creation of a "Beneficiary Fund" for the payment of death benefits to the beneficiaries named in beneficiary certificates issued to its members (Rec. 41-49). Its membership is composed of residents of different states, and in order that each member may be subject to the same duties, and enjoy the same rights with re-

spect to the "Beneficiary Fund" established and maintained for their common benefit, one law, applicable to all, must necessarily be applied to determine their respective rights and duties under the charter and the constitution and bylaws of the order. Since petitioner was created under the laws of Nebraska, it follows, logically, we think, that since the many different and conflicting laws of all of the states in which petitioner may have issued beneficiary certificates cannot be applied without thereby giving to members residing in one state rights denied to members residing in another, nor without subjecting members residing in one state to duties not recognized in other states, the laws of Nebraska, under which petitioner was created, and to which it owes its existence, should, and must, be applied.

In the court below it was determined that the laws of Missouri should be applied to determine the rights of members to whom certificates were issued in Missouri. If the decision of the court below is sound, then it follows that with respect to certificates issued in other states, the laws of those other states must, likewise, be applied. If under the laws of one state the member's certificate is valid, and under the laws of another it is invalid, the equality which should, and must, exist between the members in respect of their enjoyment of the "Beneficiary Fund" and their corresponding duty to maintain it, is completely and wholly destroyed.

If the opinion of the court below is allowed to stand, the following conditions would obtain:

The association has authority in Missouri which is denied it in Nebraska—its home state;

Members have rights in Missouri denied them at home;

Section 82 is valid in Missouri, but void at home;

The certificate means one thing in Missouri and another thing across the fence in Nebraska;

The rights of members depend upon their locality;

There is no basis for levying assessments to pay losses nor for determining the liability of the association;

Forty-eight certificates issued to members in 48 different states might constitute 48 different contracts with different standards of rights, duties and liabilities;

There is no mutuality among the members.

All of which is contrary to the pronouncement of Mr. Justice Holmes in *Modern Woodmen of America* v. *Mixer*, *supra*, to-wit (l. c. 551):

> "We need not consider what other states may refuse to do, but we deem it established that they cannot attach to membership rights against the company that are refused by the law of the domicile."

If the courts of each state should adopt the decision of the Kansas City Court of Appeals, the constitutional provision would go out the window and confusion would come in. Instead of *comity*, there would be retaliation; instead of full faith and credit, there would be its opposite—no faith and no credit.

(b) The judgment of the Supreme Court of Nebraska was a final, valid adjudication that under petitioner's charter, Section 82 of petitioner's bylaws and the limited payment provisions of its beneficiary certificates issued pursuant to said bylaw were ultra vires of petitioner and invalid, and that petitioner is not estopped to assert their invalidity in a suit based upon the provisions of said bylaw to enforce the limited payment features of the beneficiary certificate.

The entire record in the case of *Trapp* v. *Sovereign Camp of the Woodmen of the World*, 102 Neb. 562, authenticated under the Acts of Congress, was introduced in evidence in the instant case and appears in the record before this court at pages 71 to 94.

In that case Prince L. Trapp, being the holder of a beneficiary certificate issued by petitioner in the year 1895 and containing the "payments to cease after 20 years" clause, instituted, in the District Court of Douglas County, Nebraska, a suit to compel petitioner to issue to him a paid-up certificate under the provisions of Section 82. The petition alleged, in substance, that he became a member of the association in reliance upon the limited payment feature of the beneficiary certificate and that he had paid his dues and assessments for more than twenty years. His action was a class suit, as is illustrated by the following quotation from his petition:

> "Comes now the plaintiff, for and on behalf of himself and all others similarly situated, and for cause of action * * *" (Rec. 72).

This petitioner filed an answer alleging, in substance, that Section 82 and the limited payment provisions of the beneficiary certificate were *ultra vires* and invalid.

Plaintiff filed a reply alleging, among other things, that petitioner was "* * * forever estopped from denying the validity of its contract * * *" (Rec. 89).

In the trial court judgment was rendered for petitioner from which an appeal was taken to the Supreme Court of Nebraska, where the judgment was affirmed.

The Supreme Court of Nebraska said (Rec. 94, l. c. 563):

> "The main questions presented have been determined adversely to plaintiff in the case of *Haner* v. *Grand Lodge, A. O. U. W.*, No. 20280, decided June 15, 1918, and on the authority thereof the judgment of the district court is affirmed."

In the case of *Haner* v. *Grand Lodge, A. O. U. W.*, 102 Neb. 563, referred to in the opinion in the Trapp case, the defendant, a fraternal beneficiary association created under the laws of Nebraska, enacted a bylaw which provided (l. c. 564):

> "Section 170. SURRENDER VALUE.—Any member in good standing, seventy years or more of age, may make application for a final card as provided in these laws, and upon complying with the conditions necessary to the granting of the same, shall be entitled to be paid from the beneficiary fund, at the time of the issuance of the same, a sum equal to all beneficiary assessments paid by him to the Grand Lodge of Nebraska, and a sum equal to all emergency fund payments made by him since the adoption of Article 29 of the Grand Lodge by-laws in 1905, together with four per cent. simple interest on each of said sums, said interest to be figured on the payments made each year from January 1st after the same were paid."

Plaintiff, having attained the age of 70 years, sought to compel the defendant association to make payment of the sum provided for in the above-quoted bylaw.

The Supreme Court of Nebraska held that the enactment of the bylaw was *ultra vires* of the association and void, and that the association was not estopped to assert the invalidity of the bylaw. The court said (l. c. 565, 566):

> "The ruling of the trial court is based upon the theory that Section 170 of the bylaws was *ultra vires* and void under the statutes regulating the defendant association. The statutes cited read in part as follows:
>
> > 'A fraternal beneficiary association is hereby declared to be a corporation, society or voluntary association, formed or organized and carried on for the sole benefit of its members and their beneficiaries and not for profit. Each such beneficiary association shall have a lodge system, with ritualistic form of work, and a representative form of government.' Rev. St., 1913, Sec. 3295.
> >
> > 'Such society shall make provision for the payment of benefits in case of death, and may make provision for the payment of benefits in case of sickness, temporary or permanent physical disability, either as a result of disease, accident or old age: Provided, the period in life at which payment of physical disability benefits on account of age commences shall not be under seventy years.' Rev. Stat., 1913, Sec. 3296.
>
> "Is Section 170 of the bylaws *ultra vires* and *wholly* void? The statute gives power to bestow aid upon members who are sick or disabled, as a result of disease, accident or old age, but provides that

benefits shall not accrue because of old age until the member has reached the age of 70 years. It does not give the right to confer such benefits upon a member merely because he reaches the age of 70 years; physical disability must be coupled with his years. The section of the bylaws forming the basis of this action fixes a definite surrender value without regard to the physical condition of the member. It is alleged that plaintiff is under permanent physical disability 'by reason of having reached the age of 70 years.' It is a matter of common knowledge that the attainment of this age does not necessarily work disability, and this statement in the petition adds nothing to the provisions of Section 170 of the bylaws. Under the terms of this bylaw disability is of no consequence; the time for settlement is fixed and definite without regard to the member's physical condition. The statute of Kansas governing this class of associations is essentially the same as ours. It has there been held that the statute does not authorize such payment. *Kirk* v. *Fraternal Aid Ass'n*, 95 Kan. 707, 149 Pac. 400. In support of this holding there are a number of citations which we do not here set out, but they may be found in the original report.

"It is argued that the association is estopped to deny the validity of this section of the bylaws. The association was operating under the statute at the time plaintiff became a member. Plaintiff, as a member of the association, was a party to the adoption of this bylaw. He does not stand in the same relation to the association as does the holder of a policy in a standard life insurance company, but occupies the dual position of insurer and insured. *The association could not directly write a contract for this class of insurance and the law will not permit the association to evade the statute and do by indirection what it may not directly do.* 22 Cyc. 1417" (italics ours).

It will be observed that the issues involved in the *Trapp* case with respect to the validity of Section 82 and the validity of the limited payment features of the beneficiary certificate were identical to the issues in the instant case. It was contended in the *Trapp* case, like the instant case, that petitioner was estopped from asserting the invalidity of the bylaw and of the "payments to cease" clause of the beneficiary certificate, but the contention was foreclosed by the Supreme Court of Nebraska in deciding the issues in favor of petitioner. The *Trapp* case involved the identical bylaw that is involved in the instant case and a certificate identical, in substance, to the one involved in the instant case (compare certificate here involved, Rec. 22, with *Trapp* certificate, Rec. 75). It is thus apparent that the bylaw under which respondents' rights in the instant case are predicated and the limited payment feature of the beneficiary certificate have each been held *ultra vires* of petitioner and invalid by the highest judicial tribunal of the state under the laws of which petitioner was created.

(c) The aforesaid judgment of the Supreme Court of Nebraska having been rendered in a suit brought for the benefit of a class to which Pleasant Bolin belonged, and being a final adjudication of a controversy as to which petitioner could stand in judgment for its members, is res adjudicata and binding upon respondents, and should have been accorded full faith and credit in the court below.

In an early decision of this court in the case of *Smith* v. *Swormstedt*, 16 How. 288, it was said (l. c. 303):

"Where the parties interested in the suit are numerous, their rights and liabilities are so subject to change and fluctuation by death or otherwise, that it would not be possible, without very great inconvenience, to make all of them parties, and would oftentimes prevent the prosecution of the suit to a hearing. For convenience, therefore, and to prevent a failure of justice, a court of equity permits a portion of the parties in interest to represent the entire body, and the decree binds all of them the same as if all were before the court. The legal and equitable rights and liabilities of all being before the court by representation, and especially where the subject-matter of the suit is common to all, there can be very little danger but that the interest of all will be properly protected and maintained."

The rule announced by this court in the case last cited has been steadfastly adhered to and is recognized and applied in appropriate cases in the courts of substantially all the states of the nation. The rule has frequently been applied in litigation to which a corporation is a party and which involves a subject matter common to all members of the corporation. In such cases it is held that the members of the corporation are represented in the litigation by the corporation and that a judgment or decree rendered in such proceedings, if binding upon the corporation, is, likewise, binding upon the members, except as to matters personal to themselves, although they were not in fact parties to the action. Thus, in a number of cases decided by this court it has been held that a judgment rendered in a suit to determine the liability of stockholders to assessment to which the corporation was a party, is binding upon all of the members

of the corporation, although they had not been summoned, nor were they present as parties to the action. *Hawkins* v. *Glenn*, 131 U. S. 319; *Bernheimer* v. *Converse*, 206 U. S. 516; *Converse* v. *Hamilton*, 224 U. S. 243; *Selig* v. *Hamilton*, 234 U. S. 652; *Broderick* v. *Rosner*, 294 U. S. 629.

The rule was recently recognized and applied by the Supreme Court of Nebraska in the case of *Parker* v. *Luehrmann et al.*, 126 Neb. 1.

In that case, a bank was closed and a receiver appointed by the District Court of Wayne County, Nebraska. Subsequently, after all of the bank's assets had been liquidated and exhausted, a decree of deficiency was rendered by the court conducting the receivership proceedings and all stockholders of the bank were assessed upon their stock an amount equivalent to the limit prescribed by the Constitution of Nebraska.

Thereafter, the receiver instituted, in the District Court of Cuming County, Nebraska, a suit in equity to recover of the stockholders, who were residents of that county, the amount assessed in the receivership proceedings.

It was contended by the stockholders that the deficiency decree rendered in the receivership proceedings was not binding upon them, for the reason that they were not parties to the action.

The Supreme Court of Nebraska said (l. c. 8, 9):

> "The suggestion by the appellants that the order of deficiency of June 15, 1929, was not binding upon the stockholders we believe was not an issue

in the lower court. In any event, the bank was properly in court and the receivership court had full jurisdiction over it and its affairs. The order was binding upon the banking corporation and, therefore, binding upon all its stockholders. *Hawkins* v. *Glenn,* 131 U. S. 319, 98 S. Ct. 739, 33 L. Ed. 184; *Brownell* v. *Adams, supra; Commonwealth Mutual Fire Ins. Co.* v. *Hayden,* 60 Neb. 636, 83 N. W. 922, 83 Am. St. Rep. 545; *Bernheimer* v. *Converse,* 206 U. S. 516, 27 S. Ct. 755, 51 L. Ed. 1163; 6 Thompson, Corporations (3d Ed.), 878-885, Secs. 4981-4986."

If the rule announced in the foregoing cases is applicable in the instant case, it follows, we think, that the *Trapp* judgment is *res adjudicata* and binding upon respondents, not only under the decisions of this court, but also under the decisions of the highest court of Nebraska in the case of *Parker* v. *Luehrmann et al., supra,* and was, accordingly, entitled to have been accorded full faith and credit in the court below.

That the doctrine of the above cases is applicable to the instant case is, we think, fully demonstrated in the case of *Supreme Council of the Royal Arcanum* v. *Green, supra,* where Mr. Chief Justice White, after stating the rule in respect of the right of a corporation, in certain controversies, to stand in judgment for its members, said (l. c. 544):

"That the doctrines thus established, if applicable here, are conclusive is beyond dispute. That they are applicable clearly results from the fact that although the issues here presented as to things which are accidental are different from those which were presented in the cases referred to, *as to every es-*

sential consideration involved the cases are the same, and the controversy here presented is and has been therefore long since foreclosed" (italics ours).

Further, in the opinion, it was said (l. c. 545):

> "* * * if the Massachusetts law applies, the full faith and credit due to the judgment additionally exacts that the right of the corporation to stand in judgment as to all members as to controversies concerning the power and duty to levy assessments must be recognized, the duty to give effect to the judgment in such case being substantially the same as the duty to enforce the judgment."

Another case in point is *Hartford Life Insurance Co.* v. *Ibs, supra.* In that case Mr. Justice Lamar, discussing the effect of the suit upon members who were not summoned as parties, said (l. c. 671, 672):

> "It was for the court of the state where the company was chartered and where the fund was maintained to say what was the character of the members' interest—whether they were entitled to have it distributed in cash; or used in paying the next assessment; or retained as a fund for the prompt settlement of claims with the right and duty on the part of the company, as their trustee, to replenish the same by collections from succeeding assessments. But it was impossible for the company to bring a suit against 12,000 members living in different parts of the United States. It was equally impossible for the 12,000 members to bring a suit against the company to determine the questions involved. Under these circumstances Dresser and thirty other members, holding certificates, brought suit 'in their own behalf and in behalf of all others similarly situated.'
>
> "That allegation, of course, would not by itself determine the character of the proceeding (*Wabash Railroad* v. *Adelbert College*, 208 U. S. 58). For, in

order that the decree should be binding upon those certificate holders who were not actually parties to the proceeding, it had to appear that Dresser and the other complainants had an interest that was, in fact, similar to that of the other members of the class, and that it was impracticable for all concerned to be made parties. But, when such common interest in fact did exist, it was proper that a class suit should be brought in a court of the state where the company was chartered and where the mortuary fund was kept. The decree in such a suit, brought by the company against some members, as representatives of all, or brought against the company by 30 certificate holders for 'the benefit of themselves and all others similarly situated,' would be binding upon all other certificate holders."

In the case last cited, it was made clear that the fact that the action in Connecticut was different in form from the action in Minnesota rendered the decree of Connecticut court none the less binding with respect to the issues that were actually decided. The court said (L. c. 673):

"It is said, however, that even if the decree, determining the status and use to be made of the mortuary fund, was binding upon members and beneficiaries, it could not be offered in evidence in a suit on a policy of insurance, since the cause of action and the thing adjudged in the two cases was different—one involving the status of the fund and the rights of members therein while the present case related to the right of a beneficiary to recover on a policy and the power of the company to declare a forfeiture. But the defendant's contention that the policy had lapsed, because of the failure of Ibs to pay the assessment, and the plaintiff's reply that the assessment was void because the mortuary fund was sufficient to meet Call 127, raised an issue as

to the right of the insurance company to levy the assessment. On that issue the Connecticut decree was admissible, since it adjudged that the company had the right to make advances to pay claims and could subsequently collect the amount of such claims by an assessment levied as in the present case. Its right so to do having been determined by a court of competent jurisdiction, the decree was binding between the parties or their privies in any subsequent case in which the same right was directly or collaterally involved. For *'even if the second suit is for a different cause of action, the right, question, or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified.' Southern Pacific Co.* v. *United States,* 168 U. S. 48-49. So also it was held in *Forsyth* v. *Hammond* (166 U. S. 518), that 'though the form and causes of action be different, a decision by a court of competent jurisdiction in respect to any essential fact or question in the one action is conclusive between the parties in all subsequent actions.'"

The same result as that reached in *Hartford Life Ins. Co.* v. *Ibs, supra,* was reached in the later case of *Hartford Life Ins. Co.* v. *Barber, supra,* involving the same corporation and the same judgment of the Connecticut court.

The controversy adjudicated in the Trapp case was one common to all members of the association because the determination of the authority of the association and the validity of Section 82 and of the limited payment feature of the beneficiary certificate was necessarily a determination, also, of the equality of the rights of the respective members in the "Beneficiary Fund" main-

tained and established by them for their common benefit and of their corresponding duties to pay dues and assessments to keep the fund intact. This being true, it follows, we think, that under the foregoing decisions of this court, as well as under the doctrine obtaining in Nebraska as announced by the Supreme Court of Nebraska in the case of *Parker* v. *Luehrmann et al., supra,* the *Trapp* judgment was *res adjudicata* and binding upon all of the members of the association and their privies, it being established that under the full faith and credit provision of the constitution, the judgment is entitled to be accorded the same credit, validity and effect in the courts of Missouri that would be accorded to it in the courts of Nebraska. *Mills* v. *Duryee,* 7 Cranch 481; *Hampton* v. *McConnell,* 3 Wheat. 234; *Hancock National Bank* v. *Farnum,* 176 U. S. 640; *Roche* v. *McDonald,* 275 U. S. 449, and cases cited, *supra.*

(d) If the Nebraska judgment is not considered res adjudicata and binding upon respondents in a personal sense, it nevertheless announces the legal significance of petitioner's charter under the laws of Nebraska, and the charter, as thus interpreted, was entitled to have been accorded full faith and credit in the court below.

The charter of a corporation is a "public act" of the state under the laws of which the corporation was created within the meaning of Article IV, Section 1 of the Constitution of the United States, and is entitled to be accorded full faith and credit in the courts of every other state in the nation. This was recognized by this court in the case of *Chicago & Alton Railroad* v. *Wiggins Ferry*

Co., 119 U. S. 615, where Mr. Chief Justice Waite said (l, c. 622):

> "The railroad company set up in its answer, as a defense to the action, that it had no authority to make the contract sued on, and in support of this defense put in evidence its Illinois acts of incorporation. Without doubt the constitutional requirement, Article IV, Section 1, that 'full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state,' implies that the public acts of every state shall be given the same effect by the courts of another state that they have by law and usage at home. This is clearly the logical result of the principles announced as early as 1813 in *Mills* v. *Duryee*, 7 Cranch 481, and steadily adhered to ever since."

It was further recognized in the case last cited that the charter of a corporation created in one state will be given the same effect in the courts of other states that is given to it under the laws of the state where the corporation was created if the laws of the state of creation are pleaded and proven as a fact in the proceedings in the foreign state.

In the later case of *Supreme Council of the Royal Arcanum* v. *Green, supra*, the controversy concerned the power of the association under its charter to levy an increased assessment upon its members, and the association, contending that it had power to levy the assessment, introduced in evidence a judgment of the highest court of Massachusetts under the laws of which the association was created adjudicating that under the charter of the association, the assessment was valid, and contended that the charter of the association, as inter-

preted by the judgment, was entitled to be accorded full faith and credit under Article IV, Section 1 of the Constitution.

This court upheld the contention thus made by the association, and held that the charter, as interpreted by the Massachusetts judgment, was entitled to have been accorded full faith and credit in the courts of New York. In the course of the opinion, it was said (l. c. 546):

> "Coming then to give full faith and credit to the Massachusetts charter of the corporation and to the laws of that state to determine the powers of the corporation and the rights and duties of its members, there is no room for doubt that the amendment to the bylaws was valid if we accept, as we do, the significance of the charter and of the Massachusetts law applicable to it as announced by the Supreme Judicial Court of Massachusetts in the *Reynolds Case*. And this conclusion does not require us to consider whether the judgment *per se*, as between the parties, was not conclusive in view of the fact that the corporation for the purposes of the controversy as to assessments was the representative of the members."

The same result was reached in the case of *Hartford Life Ins. Co.* v. *Barber*, *supra*, where the validity of an assessment on the members of a mutual insurance company was in controversy, and the insurance company having introduced in evidence a judgment of the highest court of Connecticut, under the laws of which the corporation was created, adjudicating the validity of the assessment under the company's charter, it was held that the charter of the company, as interpreted by the Connecticut judgment, was entitled to have been accorded full faith and credit in the court below.

Mr. Justice Holmes, who delivered the opinion of the court, said (l. c. 150):

> "The powers given by the Connecticut charter are entitled to the same credit elsewhere as the judgment of the Connecticut court."

In the instant case, petitioner not only pleaded in its answer, but also introduced in evidence, the provisions of its articles of incorporation forming a part of its charter granted under the laws of Nebraska. In accordance with the rule announced in *Chicago & Alton Railroad* v. *Wiggins Ferry Co., supra,* it likewise pleaded in its answer, and introduced in evidence, a duly authenticated copy of the judgment of the Supreme Court of Nebraska in *Trapp* v. *Sovereign Camp of the Woodmen of the World, supra,* where it was adjudicated that under its charter Section 82 and the limited payment provision of the beneficiary certificates issued thereunder were *ultra vires* of petitioner and invalid. The court below was bound to follow the interpretation placed upon petitioner's charter by the highest court of the state under the laws of which the charter was issued, since the charter, being a "public act" within the meaning of Article IV, Section 1 of the Constitution, was entitled to have been accorded the same credit, validity and effect that would be accorded to it by law or usage in Nebraska. The error of the court below in refusing to accord full faith and credit to petitioner's charter as interpreted by the highest court in Nebraska is, we think, sufficient ground for reversal of the judgment of the court below.

(e) The decision of the court below on the question of estoppel was, of itself, a denial of full faith and credit to petitioner's charter and the Nebraska judgment because: (1) the decision was reached by application of the laws of Missouri instead of the laws of Nebraska; and (2) the issue of estoppel was finally adjudicated by the Nebraska judgment in favor of petitioner.

It was decided in the court below that if it was *ultra vires* of petitioner to enact Section 82 and to issue limited payment certificates thereunder, petitioner was nevertheless estopped under the laws of Missouri, which were held to be applicable, to assert the invalidity of the by-law and the limited payment provisions of the beneficiary certificate. The court did not decide that petitioner was estopped under the Nebraska law. In the course of the opinion, it was said (Rec. 152):

> "Whether such act was *ultra vires* its powers, acting in either capacity, is a question to be determined by the laws of Missouri. * * * Likewise, the question of estoppel."

In the additional opinion filed upon overruling petitioner's last motion for rehearing, the court indicated that under certain facts its decision might have been different, and then stated (Rec. 163):

> "If such a case be presented to this court, we assert the right of this court to decide all matters of *ultra vires* and estoppel by the laws of Missouri."

Since the decision of the Kansas City Court of Appeals on the question of estoppel is based upon the laws of Missouri, and not upon the laws of Nebraska, the decision in this respect alone is violative of the full faith and credit provision of the Constitution.

But there is another reason why the court's decision on the question of estoppel is violative of the constitutional provision. An examination of the record in *Trapp* v. *Sovereign Camp of the Woodmen of the World, supra,* reveals that the petition filed in that case alleged, in substance, that Trapp became a member of the association in reliance upon the limited payment feature of the beneficiary certificate, and that in the reply to the answer filed by petitioner that Section 82 and the limited payment provisions of the beneficiary certificate were *ultra vires* and invalid, plaintiff alleged, among other things, that petitioner was "* * * forever estopped from denying the validity of its contract * * *" (Rec. 71-89). It is thus apparent that the question of estoppel was directly in issue in the *Trapp* case, and was foreclosed by the judgment rendered.

This conclusion is made clear by an examination of the opinion of the Supreme Court of Nebraska in *Haner* v. *Grand Lodge, A. O. U. W., supra,* on which the *Trapp* judgment was based. In the *Haner* case it was said (l. c. 566):

> "It is argued that the association is estopped to deny the validity of this section of the bylaws. The association was operating under the statute at the time plaintiff became a member. Plaintiff, as a member of the association, was a party to the adoption of this bylaw. He does not stand in the same relation to the association as does the holder of a policy in a standard life insurance company, but occupies the dual position of insurer and insured. *The association could not directly write a contract for this class of insurance and the law will not permit the association to evade the statute and do by indirection*

what it may not directly do. 22 Cyc. 1417" (italics ours).

It is settled by repeated decisions of this court that petitioner's charter and the Trapp judgment are entitled to be given in the court of Missouri the same credit, validity and effect that would be given to them in the courts of Nebraska, and that only such defenses to the judgment as could be made to it in the courts of Nebraska may be made in the courts of Missouri. *Mills* v. *Duryee*, 7 Cranch 481; *Hampton* v. *McConnell*, 3 Wheat. 234; *Hancock Nat'l Bank* v. *Farnum*, 176 U. S. 640; *Converse* v. *Hamilton*, 224 U. S. 243; *Roche* v. *McDonald*, 275 U. S. 449. It is likewise settled by repeated decisions of this court that a judgment of a foreign state is conclusive as to all of the *media concludendi*. *American Express Co.* v. *Mullins*, 212 U. S. 311; *Fauntleroy* v. *Lum*, 210 U. S. 230; *United States* v. *California & Oregon Land Co.*, 192 U. S. 355.

(f) The opinion of the Supreme Court of Nebraska was the construction of a fraternal charter. It held that under said charter Section 82 and the "payments to cease" clause were ultra vires and void. It also held that the plea of estoppel was not available. It is, therefore, wholly immaterial whether under the Missouri law the certificate is labeled fraternal or old line. If the constitutional question is present, the plea of estoppel, under the Missouri law, must be absent. They are antagonistic and cannot abide together. The fact that no license was required of the association in Missouri at the time the certificate was written in no sense affects the constitutional mandate.

One of the reasons assigned by the court below for refusing to accord full faith and credit to the judgment in

Trapp v. *Sovereign Camp, supra,* was that the Trapp case was unlike the instant case, the former involving a fraternal certificate and the latter an old-line contract of insurance. The opinion further held, in substance, that the fact that no license was required of the association in Missouri at the time the certificate was issued and the further fact that there was no pleading or proof that the society complied with the after-enacted fraternal statutes, changed the certificate into an old-line policy (Rec. 147-149), and because the certificate was old line, the Trapp case was inapplicable. Said opinion is in part as follows (Rec. 159):

> "The Trapp case is not on all fours with this case. That case did not involve any question as to the status of the defendant therein being that of a regular old-line insurance company rather than of a fraternal society * * * The certificate in that case (Trapp) was treated as the contract of a fraternal society * * * The question of the *ultra vires* character of the certificate was not discussed, considered or determined from any standpoint other than that it was the contract of a fraternal society * * * That it was *ultra vires* the powers of the defendant society considered as an old-line or regular insurance company * * * was not involved or determined * * * The two cases are not, therefore, alike."

We think that if the full faith and credit provision requires application of the Nebraska law, then it is immaterial whether under the Missouri law the certificate is labelled "old-line" or "fraternal." The basic fact remains that Section 82 and the "payments to cease" clause are *ultra vires* and void in Nebraska and the

courts of Missouri cannot breathe into them the breath of life. Repeating Mr. Justice Holmes in *Canada, Southern Railroad* v. *Gebhard*, 109 U. S. 527, l. c. 537:

> "Whatever disabilities are placed upon a corporation at home, it retains abroad."

The Supreme Court of Nebraska having placed upon the association a disability under the Nebraska law, the courts of Missouri cannot remove it. Likewise, *the presence of the constitutional question in this case renders the plea of estoppel under the Missouri law unavailable.* The constitutional mandate cannot be annulled by such a gesture.

While petitioner is a fraternal association an examination of the authorities heretofore cited will show that the full faith and credit defense is not limited to fraternal societies, but applies with equal force to the relationship between other corporations and its members.

(g) Application of the Missouri insurance laws by the court below changed and impaired the substantive rights of petitioner established by the laws of Nebraska and its charter and the Nebraska judgment were denied the credit, validity and effect to which they were entitled under the full faith and credit provision of the constitution.

The court below, after deciding that the law of the State of Missouri was applicable in deciding the controversy between the parties, further decided that since at the time of the issuance of the beneficiary certificate in question there was no statute in the State of Missouri with respect to foreign fraternal beneficiary associations doing business within the state, and that

petitioner had failed to plead or prove compliance with statutes subsequently enacted with respect to exemption of fraternal beneficiary associations from the provisions of the general insurance laws, petitioner did business in the State of Missouri under its general insurance laws, and that the beneficiary certificate, for this reason alone, instead of being the indicia of membership in a fraternal order, was an "old-line" contract of insurance.

It is not necessary to again make reference to the decisions of this court establishing the proposition that a controversy of the kind under consideration must be determined by the laws of the state under which the association was created. That being established, the only remaining question is whether or not a legislative enactment of a state may be applied to change the substantive rights of parties created under the laws of a foreign state and which, beyond question, are applicable to their controversy.

This question has many times been decided by this court.

The case of *Bradford Electric Light Co.* v. *Clapper*, 286 U. S. 145, was a common-law action for damages brought by an employee against his employer in the courts of New Hampshire. The relationship of master and servant had been created in Vermont, and under the Workmen's Compensation Act of that state a common-law action for damages could not be maintained. Under the Workmen's Compensation Act of New Hampshire, however, such an action could, under certain circumstances, be maintained.

It was contended by the employer that since the relationship of master and servant had been created in Vermont, the laws of that state were applicable, and the Vermont Workmen's Compensation Act being a "public act" within the meaning of the full faith and credit provision of the constitution, was entitled to be accorded full faith and credit in the courts of New Hampshire.

It was contended by the employee that the provisions of the Vermont act were obnoxious to the public policy of New Hampshire, and that consequently the full faith and credit provision of the constitution need not be applied by the courts of New Hampshire; but this court, in deciding the controversy and conceding that under certain circumstances the declared public policy of the state may justify refusal to accord full faith and credit to the public acts, records and judicial proceedings of a foreign state, said (l. c. 160, 161):

"But the company is in a position different from that of a plaintiff who seeks to enforce a cause of action conferred by the laws of another state. The right which it claims should be given effect is set up by way of defense to an asserted liability; and to a defense different considerations apply. Compare *Home Insurance Co.* v. *Dick,* 281 U. S. 397, 407, 408. A state may, on occasion, decline to enforce a foreign cause of action. In so doing, it merely denies a remedy, leaving unimpaired the plaintiff's substantive right, so that he is free to enforce it elsewhere. But to refuse to give effect to a substantive defense under the applicable law of another state, as under the circum-

stances here presented, subjects the defendant to irremediable liability. This may not be done.

"Compare *Modern Woodmen of America* v. *Mixer*, 267 U. S. 544, 550, 551; *Aetna Life Insurance Co.* v. *Dunken*, 266 U. S. 389; *Royal Arcanum* v. *Green*, 237 U. S. 531. See, also, *Western Union Telegraph Co.* v. *Brown*, 234 U. S. 542; *Atchison, Topeka & Santa Fe Ry. Co.* v. *Sowers*, 213 U. S. 55, 69."

In another portion of the opinion, the court, discussing the applicability of the Vermont law, and its controlling effect upon the controversy in the courts of New Hampshire, said (l. c. 158, 159):

"The relation between Leon Clapper and the company was created by the law of Vermont; and as long as that relation persisted its incidents were properly subject to regulation there, for both Clapper and the company were at all times residents of Vermont; the company's principal place of business was located there; the contract of employment was made there; and the employee's duties required him to go into New Hampshire only for temporary and specific purposes, in response to orders given him at the Vermont office. *The mere recognition by the courts of one state that parties by their conduct have subjected themselves to certain obligations arising under the law of another state is not to be deemed an extraterritorial application of the law of the state creating the obligation.* Compare *Canada Southern Ry. Co.* v. *Gebhard*, 109 U. S. 527, 536, 537.

"*By requiring that, under the circumstances here presented, full faith and credit be given to the public act of Vermont, the Federal Constitution prevents the employee or his representative from asserting in New Hampshire rights which would be denied him in the state of his residence and employment.* A Vermont court could have enjoined Leon Clapper

from suing the company in New Hampshire, to recover damages for an injury suffered there, just as it would have denied him the right to recover such damages in Vermont. Compare *Cole* v. *Cunningham*, 133 U. S. 107; *Reynolds* v. *Adden*, 136 U. S. 348, 353. The rights created by the Vermont act are entitled to like protection when set up in New Hampshire by way of defense to the action brought there. If this were not so, and the employee or his representative were free to disregard the law of Vermont and his contract, the effectiveness of the Vermont act would be gravely impaired. For the purpose of that act, as of the workmen's compensation laws of most other states, is to provide, in respect to persons residing and businesses located in the state, not only for employees a remedy which is both expeditious and independent of proof of fault, but also for employers a liability which is limited and determinate. Compare *New York Central R. Co.* v. *White*, 243 U. S. 188; *Hawkins* v. *Bleakly*, 243 U. S. 210; *Mountain Timber Co.* v. *Washington*, 243 U. S. 219" (italics ours).

The principle involved in the case last cited is not unlike the principle involved in the instant case. In that case it was determined that the law of a foreign state was applicable. This cannot logically, nor authoritatively, be disputed in the instant case. In that case, as in the instant case, a suit had been instituted in a foreign state, which had a statute, if it were applicable, which would have governed the controversy between the parties; but it was pointed out by this court in the Bradford case, in holding it inapplicable, that the mere recognition by the courts of one state that parties by their conduct have subjected themselves to certain obligations arising under the laws of another state is not an extraterritorial application of the law of the state creating the obligation,

and that to apply the statute applicable if the *lex fori*, or some other law, governed, would be to deny to the statutes of the foreign state, whose laws were applicable, the full faith and credit to which they were entitled under the constitution. In the present case, the parties, by their conduct, have made applicable the laws of Nebraska. This is asserted by petitioner as a defense to the action, and to give it recognition does not give extraterritorial effect to the laws of that state; but to apply the statutes of the State of Missouri, conceded *arguendo* to be applicable if the laws of Missouri were applicable to the controversy, is to deny to petitioner's charter and to the judgment of the Supreme Court of Nebraska, declaring its legal significance under the laws of Nebraska, the credit, validity and effect to which they are entitled under the constitution.

The same principle was announced by this court in the recent case of *John Hancock Mutual Life Insurance Co.* v. *Yates*, 299 U. S. 178, where an insurance company, created under the laws of Massachusetts, had issued and delivered a policy of life insurance in the State of New York. After the death of the insured, his widow, and beneficiary under the policy, moved from New York to the State of Georgia, and thereafter instituted suit in the courts of Georgia to recover on the policy of insurance. Under the New York law, a misrepresentation in the application for life insurance as to the health of the applicant had the effect of avoiding the policy. Under the law of Georgia, a misrepresentation did not have the effect of avoiding the policy unless it was material to the

risk, and the question of whether or not it was material to the risk was a question for the jury.

The Georgia court applied the Georgia law, and recovery was allowed on the policy notwithstanding the existence of a misrepresentation as to the health of the insured in the application. This court, reversing the judgment of the Georgia court, held that since the policy of insurance was issued and delivered in the State of New York, where the insured and his beneficiary resided, the laws of that state were controlling, and that the Georgia court erred in applying the law of Georgia. In the course of the opinion, it was said (l. c. 182, 183):

> "The company sets up as a defense a substantive right conferred by a statute of New York. The contract of insurance was made and the death of the insured occurred in that state. In respect to the accrual of the right asserted under the contract, or liability denied, there was no occurrence, nothing done, to which the law of Georgia could apply. Compare *Home Insurance Co.* v. *Dick*, 281 U. S. 397, 408, 50 S. Ct. 338, 341, 74 L. Ed. 926, 71 A. L. R. 701. To sustain the defense involves merely recognition by the courts of Georgia that the parties have by their contract made in New York subjected themselves to certain conditions prescribed by its statute. Such recognition does not give to the New York statute extraterritorial effect. The statute of New York prescribes, or limits, the things which will be effective to create binding contracts of insurance, or terms in them. As construed by the highest court of the state, the statute makes the policy with the application annexed the entire contract between the parties. And it declares that a false answer in the application to the precise question here involved is a material misrepresentation which avoids the policy;

and that the fact that a truthful answer was orally given to the agent but not recorded is without legal significance. In so declaring, the statute enacts a rule of substantive law which became a term of the contract, as much so as the amount of the premium to be paid or the time for its payment. The declaration by the statute as construed and applied by the highest court of New York that the false answer here involved is a material misrepresentation which avoids the policy determines the substantive rights of the parties as fully as if a provision to that effect had been embodied in writing in the policy. To refuse to give that defense effect would irremediably subject the company to liability. Compare *Bradford Electric Light Co., Inc.*, v. *Clapper*, 286 U. S. 145, 160, 52 S. Ct. 571, 576, 76 L. Ed. 1026, 82 A. L. R. 696. Because the statute is a 'public act,' faith and credit must be given to its provisions as fully as if the materiality of this specific misrepresentation in the application, and the consequent nonexistence of liability, had been declared by a judgment of a New York court. *Bradford Electric Light Co., Inc.*, v. *Clapper*, *supra*, 286 U. S. 145, at page 155, 52 S. Ct. 571, 76 L. Ed. 1026, 82 A. L. R. 696."

Another case decided by this court quite similar, in principle, with the instant case is the case of *Aetna Life Ins. Co.* v. *Dunken*, 266 U. S. 389.

In that case an insurance company had issued a policy of insurance to a resident of the State of Texas, but because of his previous residence in the State of Tennessee and the fact that the policy issued in Texas was but a conversion of a previous policy issued in the State of Tennessee, it was determined by this court that the laws of Tennessee were applicable in deciding the rights of the parties under the policy of insurance.

There was in existence in the State of Texas a statute providing for the penalties and attorneys' fees in the event of vexatious delay by an insurance company in making payment of its obligations under policies of insurance issued in the State of Texas. In the Texas court the beneficiary named in the policy was allowed to recover penalties and attorneys' fees for vexatious delay under the Texas statute. But this court, in reviewing the judgment of the Texas court, held that since the Tennessee law was applicable in deciding the rights of the parties under the the policy of insurance, the Texas statute, although relating to the issuance of policies by foreign insurance companies in the State of Texas, could not constitutionally be applied. The court said (l. c. 399):

> "The contract contained in the original policy was a Tennessee contract. The law of Tennessee entered into it and became a part of it. The Texas statute was incapable of being constitutionally applied to it, since the effect of such application would be to regulate business outside the State of Texas and control contracts made by citizens of other states in disregard of their laws under which penalties and attorneys' fees are not recoverable."

The principle announced in the foregoing cases is the same as that applied by Mr. Justice Holmes in *Modern Woodmen of America* v. *Mixer*, *supra*, where the validity of a bylaw enacted by a fraternal beneficiary association created under the laws of the State of Illinois was in issue in the courts of the State of Nebraska. Under the laws of the State of Illinois, the bylaw had been held valid by the highest court of that state, but

under the laws of the State of Nebraska, where the certificate was issued and where the action was being maintained, the bylaw was invalid. Mr. Justice Holmes, holding that the Nebraska law could not be constitutionally applied, said (l. c. 551):

> "We need not consider what other states may refuse to do, but we deem it established that they cannot attach to membership rights against the company that are refused by the law of the domicile."

What we have said above is in no sense an assertion that a state may not, within the limits provided by the constitution, regulate the business conducted by a foreign corporation within its territorial limits. It may, if it wishes, exclude it entirely from doing business within the state. But we do assert that a state may not, under the guise of regulating foreign corporations or prescribing conditions to the conduct of business by them within the state, change the substantive rights of parties established under the laws of another state applicable, beyond question, to the relationship between them, nor may the state, in regulating the business of a foreign corporation or prescribing conditions to its transacting business within the state, deprive the corporation of rights to which it is entitled under the Constitution of the United States. *Hanover Fire Ins. Co.* v. *Carr*, 272 U. S. 494.

In the instant case, if a cause of action could not be maintained by respondents to recover under the beneficiary certificate in controversy in the courts of the State of Nebraska, under its laws, it follows, we think,

that under the full faith and credit provision of the constitution, it may not be maintained in the courts of the State of Missouri by virtue of any legislative enactment of that state.

If Section 82 and the limited payment features of the beneficiary certificate were *ultra vires* and void in Nebraska under its laws, they were likewise *ultra vires* and void in Missouri, although under its laws the certificate is labeled an "old-line" contract of insurance, or something else. If this were not true, membership in a fraternal order under the laws of one state could, by legislative enactment of a foreign state, be converted into any other relationship conceivable, and the substantive rights of the parties could be changed at the will of the legislators of the various states.

It was, no doubt, the obvious unsoundness, and the confusion which would necessarily result from holding otherwise, as well as the express language of the constitutional provision itself, that has caused it to be become so well established by the decisions of the court that a statute enacted in one state cannot, under the full faith and credit provision of the constitution, operate to impair the credit, validity and effect which would otherwise be given to a judgment or public act of a sister state. *Christmas* v. *Russell*, 5 Wall. 290; *Fauntleroy* v. *Lum*, 210 U. S. 230; *Kenny* v. *Supreme Lodge*, 252 U. S. 411; *Roche* v. *McDonald*, 275 U. S. 449; *Aetna Life Insurance Co.* v. *Dunken*, *supra*; *Bradford, Electric Light Co.* v. *Clapper*, *supra*; *John Hancock Mutual Life Ins. Co.* v. *Yates*, *supra*.

Under the Nebraska law, as determined by the highest court of the State of Nebraska, Section 82 and the limited payment provisions in the beneficiary certificate were *ultra vires* of petitioner and invalid, and the court below was bound to give effect to this interpretation regardless of whether or not under the laws of the State of Missouri, or some other state, petitioner was an old-line insurance company and its beneficiary certificate was an old-line contract of insurance.

Conclusion.

In conclusion, it is submitted that the court below erred in refusing to apply the law of Nebraska in deciding the controversy between the parties and in refusing to accord full faith and credit to petitioner's charter and to the judgment in the *Trapp* case, wherein the legal significance of petitioner's charter, under the Nebraska law, is announced. To hold otherwise clothes petitioner with powers in the State of Missouri which do not exist elsewhere, and necessarily results in an advantage to certificate holders who are residents of the State of Missouri over certificate holders who are residents of other states. Moreover, it imposes upon petitioner a burden with respect to certificates issued in the State of Missouri not embraced within its charter nor its constitution and bylaws, and necessarily results in an impairment of the "Beneficiary Fund" with respect to which equality between each and all of the members should, and must, be maintained.

It is further submitted that because of the errors thus committed by the court below, its judgment should be reversed.

Respectfully submitted,

RAINEY T. WELLS,
of Omaha, Nebraska,
JOHN T. HARDING,
DAVID A. MURPHY,
of Kansas City, Missouri,
Attorneys for Petitioner.

M. E. FORD,
of Maryville, Missouri,
R. CARTER TUCKER,
JOHN MURPHY,
CHARLES B. TURNEY,
of Kansas City, Missouri,
Of Counsel.